



U.S. Department of Justice

Immigration and Naturalization Service

DD

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D. C. 20536

FILE:

Office: Philadelphia

Date:

JAN 24 2000

IN RE: Applicant:

APPLICATION:

Application for Certificate of Citizenship under § 341(a) of the  
Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the application will be approved.

The record reflects that the applicant was born on September 30, 1974 in Georgetown, Guyana, and was adopted on June 22, 1982. The applicant's adoptive father, [REDACTED] was born in Guyana in November 1943 and became a naturalized U.S. citizen on October 28, 1987. The applicant's adoptive mother, [REDACTED] was born in November 1949 in Guyana and became a naturalized United States citizen on January 30, 1998. The applicant's parents married each other in July 1980. The applicant was lawfully admitted for permanent residence on April 10, 1985. He seeks a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The applicant's parents were divorced on May 8, 1989 and his mother was granted custody. The record contains an All Purpose Short Order from the Family Court of the State of New York dated December 20, 1989 in which the applicant's father was granted a final order of custody with the applicant's mother to have unmonitored phone contact. The Service challenged the validity of the latter document because it did not contain any valid seal from the Court granting the decision.

The acting district director discussed the above mentioned divorce documents and noted that the All Purpose Short Order failed to mention to which minor child or children the ruling pertains. The acting district director noted that both of the applicant's adoptive parents have listed the names of the same four children on their applications for naturalization. On November 6, 1986, the applicant's father stated under oath that the applicant resided in Guyana and the other three children lived with him. On December 2, 1997, the applicant's adoptive mother stated under oath that none of the four children lived with her. The acting district director determined that the applicant had failed to submit the requested original court orders determining that his parents had obtained a legal divorce and that custody was accorded to his U.S. citizen parent prior to the applicant's 18th birthday. The acting district director then denied the application accordingly.

On appeal, counsel submits a certified copy of the divorce judgement of the applicant's parents dated May 8, 1989 which granted custody to the applicant's mother and a certified copy of an All Purpose Short Order dated September 12, 1989 granting temporary custody of the applicant to the adoptive father. Counsel also submitted documentation showing that the applicant was attending school in the United States from May 1985 to June 1992 which lists only one parent, namely his mother.

Section 321. (a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a

citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents;  
or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

In Matter of Fuentes-Martinez, Interim Decision 3316 (BIA 1997), the Board stated the following; "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of § 321(a). We now hold that, as long as all the conditions specified in § 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record establishes that (1) the applicant's father became a naturalized U.S. citizen in 1987 prior to the applicant's 18th birthday, (2) the applicant was lawfully admitted to the United States as a permanent resident on April 10, 1985, (3) the applicant's adoptive parents were granted a final judgement of divorce in May 1989. Although the applicant indicates that was residing in the United States in his father's legal custody pursuant to a September 1989 temporary court order, the final order of custody issued on December 20, 1989 is not a certified copy, and does not contain the child's name. It is also noted that the applicant lists only his mother's name as a parent on his school records following the parent's divorce.

The applicant has now established that he automatically derived U.S. citizenship through his father's naturalization. Therefore, the appeal will be sustained and the acting district director's decision will be withdrawn.

**ORDER:** The appeal is sustained. The acting district director's decision is withdrawn and the application is approved.